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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

12 IMPAX LABORATORIES, INC.,

CASE NO.: C08-0253-MMC

13 Plaintiff,

**[PROPOSED] ORDER DENYING
 MEDICIS'S MOTION TO DISMISS**

14 v.

15 MEDICIS PHARMACEUTICAL CORP.,

16 Defendant.

Having considered Medicis's Motion to Dismiss (Docket No. 17), and the papers submitted in support of and in opposition to the motion, the motion is DENIED.

The Court finds that Impax's submission of an Abbreviated New Drug Application for a generic version of Solodyn[®] Medicis's threats of suing generic competitors of Solodyn[®] for patent infringement, and Medicis's refusal to provide Impax with a covenant not to sue, demonstrate under all the circumstances that "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 771 (2007).

The Court further finds that the objectives for which the Declaratory Judgment Act was created are served by hearing Impax's declaratory judgment action, and therefore, the

1 Court's adjudication of this declaratory judgment action is appropriate. *See Micron Tech., Inc. v.*
2 *MOSAID Techs., Inc.*, __ F.3d __, 2008 WL 540182, at *4 (Fed. Cir. Feb. 29, 2008).

3 IT IS SO ORDERED.

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6 Dated: _____

7 Hon. Maxine M. Chesney
8 United States District Judge

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